



PEOPLES' RIGHT TO POLLUTION FREE AIR IN INDIA

Ganesh Hegde

Asst. Prof. in Law, Govt. First Grade College, Honavar.

I. INTRODUCTION:

Exercise and enjoyment of freedoms help us to develop our intrinsic qualities, intelligence, talents and conscience to meet our material and spiritual needs. It is needless to state that without the recognition of the right to health, education, realization of the right to development of every human being and nation is not possible.^[1] Natural resources such as air, water, and land are fundamental to all life forms: they are, much more than money and economic infrastructure, the base of our survival. The unpolluted, pure air is a source of good health, happiness and long life. Air pollution is one such form that refers to the contamination of the air, irrespective of indoors or outside. Air pollution started to become a problem for human beings with the industrial revolution.^[2] Too much air pollution can make anyone's life a living hell. Some air pollutants are also passive in their toxicity but their actions result in environmental changes by affecting the atmosphere, causing temperature rise, penetrating ultra-violet rays into the lower levels of stratosphere and depleting of the ozone layer.^[3] Industries are responsible to a great extent for the drastic atmospheric changes induced by pollutants like carbons, halons and nitrous oxide let into the air.^[4] Depletion of ozone, the gas that absorbs much of the ultraviolet radiation from the sun adversely affects not only human beings, but also animals and plants. Increased penetration of solar UV-B radiation is likely to have a profound impact on human health with potential risks of eye diseases, skin cancer and infectious diseases.^[5] Noise is also a form of air pollution. Noise pollution refers to the disturbing sound that means an excessive, offensive, persistent,^[6] may cause harm to human and animal life. Constant exposure to noise can make one deaf.^[7] Noise is a type of atmospheric pollution and it is one of the undesirable consequences of technological civilization.^[8] Environmental noise reaches the listener's ears as waves in the air. The air around us is filled with noise. It has penetrated almost every aspect of modern life.^[9] Noise tends to be unpleasant and irritating to the ear.^[10] The new data indicate that noise pollution is causing more deaths from heart disease than was previously thought.^[11] "Noise pollution contributes not only to cardiovascular disease, but also to hearing loss, sleep disruption, social handicaps, diminished productivity, impaired teaching and learning, absenteeism, increased drug use, and accidents."^[12] Noise exposure during sleep may increase blood pressure, heart rate and finger pulse amplitude as well as body movements.^[13] Hence, exposure to noise has been observed to have deleterious impact on the health status of individuals working within the ravaging environment.^[14] The transport sector is the emitter of carbon monoxide (CO) nitrogen oxide (No_x) and hydrocarbons (HC) into the air. Unplanned urbanization and congestions of traffic result in a high degree of emission of smoke from vehicles which present serious environmental problems of air pollution. The higher level of sulphur in fuel (kerosene) can deactivate catalyst. Once catalyst becomes deactivated the amount of pollution from the vehicles dramatically increases.^[15] The concentration of exhaust gases of the transport systems involves the case of carcinogenic diseases.^[16] Benzene exerts its effect by damaging the genetic materials of the cells.^[17] The right to clean air is an important aspect of right to a healthy environment. Violation, therefore, of the right to healthy environment is potentially a violation of the basic right to life.

Of the world's top 20 polluted cities, 13 are in India.^[18] Air pollution is the fifth largest killer in India taking 6.2 lakh lives per year and Delhi is among one of the five most critically polluted regions in the country.^[19] Delhi air had 153 micrograms of PM2.5 particulate matter per cubic meter. According to World Health Organization advisory it states that fine particles of less than 2.5 micrometers in diameter (PM2.5) should not exceed 10 micrograms per cubic meter. The other cities are Patna (with 149 micrograms), Gwalior (with 144 micrograms), Raipur (with 134 micrograms), Ahmedabad (with 110 micrograms), Lucknow (with 96 micrograms), Firozabad (with 96 micrograms), Kanpur (with 93 micrograms), Amritsar (with 92 micrograms), Ludhiana (with 91 micrograms), Allahabad (with 88 micrograms), Agra (with 88 micrograms), and Khanna (with 88 micrograms).^[20]

The air quality of some metropolitan cities in India
(Based on annual average data)^[21]

Name of the city	Sulphur dioxide Annual average (µg/m ³)	Nitrogen dioxide Annual average (µg/m ³)	PM10 Annual average (µg/m ³)
Hydrabad	5	24	79
Vijaywada	6	14	93
Vishakhapatnam	7	16	71
Patna	7	40	181*
Delhi	5	55*	261*
Rajkot	13	17	96
Faridabad	18	29	164*
Dhanbad	15	36	184*
Bangalore	14	31	89
Jamshedpur	35	48*	153*
Bhopal	9	18	133*
Indore	14	18	120*
Mumba	4	19	97*
Nagpur	7	33	113*
Pune	29	39	82
Amritsar	14	39	219*
Jaipur	6	37	164*
Agra	5	20	185*
Allahabad	4	24	218*
Lucknow	8	34	204*
Kanpur	7	34	203*
Kolkata	11	62	99*

PM10-Particles of less than 10 micrometers in diameter, µg-Micrograms, * Critical.

Nitrogen dioxide and sulphur dioxide levels are very high in the air of most of the cities in India. Along with these, existence of other chemicals like methane, chlorine, carbon monoxide, zinc, lead, ammonia, asbestos, benzene and their different forms dangerous to livings. As far as health indicators are concerned, good air quality days mean minimal health impacts. But on 'moderately polluted' days, it may cause breathing discomfort in those suffering from lung or heart diseases. On severely polluted days, pollution may cause respiratory effects even in healthy people and serious health impact in people with lung disease.^[22]

II. LEGAL FRAMEWORK:

Constitutional provisions: The Constitution of India originally adopted, did not contain any direct and specific provision regarding the protection of the natural environment. But some of the Directive Principles of State Policy showed a slight inclination towards environmental protection.^[23] However, the past five decades have witnessed major developments in adoption of provisions to protect the environment. Four years after the Stockholm Conference, the forty-second amendment to the constitution of India introduced. Specific provisions relating to certain aspects of the environment, more especially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy – and List III – The Concurrent List – of the Seventh Schedule of the Constitution. As a result, State has to take steps to protect and improve the environment and to safeguard the forests and wildlife of the country.^[24] And also impose a duty on citizens to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.^[25]

The Constitution makes two-fold provisions. On one hand, it gives directives to the state for the protection and improvement of the environment and on the other, it casts duty on every citizen to help in the preservation of the environment. The phrase 'protect and improve' appearing in both the Articles 48A and 51A (g) seems to contemplate an affirmative government action to improve the quality of the environment and not just to preserve the environment in its degraded form. Further the interpretation given by the Apex Court, in various decided cases, has added new dimensions to the concept of 'life'. Environmental pollution spoils the atmosphere and thereby affects the life and health of the person has been regarded as amounting violation of Article 21 of the Constitution.^[26]

Statutes and rules: In the early years of Indian independence, there was no precise environmental policy. The Government tried to make attempts only from time to time as per the growing needs of the society. Under the influence of Stockholm declaration 1972, an extensive network of environmental legislation has grown in the country. A policy framework has also been developed to complement the legislative provisions. Manifold steps were taken to improve environmental conditions.

The Air (Prevention and Control of Pollution) Act of 1981^[27] was enacted by invoking the Central Government's power under Art 253. The Act was enacted to counter the problems associated with air pollution. Ambient air quality standards were established under the 1981 Act. The Act provides a means for the control and abatement of air pollution. The Act seeks to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution. Under the Act establishing or operating of any industrial plant in the pollution control area requires consent from state boards. The boards are also expected to test the air in air pollution control areas, inspect pollution control equipment, and manufacturing processes.

In the wake of the Bhopal gas tragedy, the Government of India enacted the *Environment (Protection) Act, 1986*.^[28] This Act was introduced as an umbrella legislation that provides a holistic framework for the protection and improvement to the environment. The Act provides for the protection and improvement to the environment and for matters connected therewith. The definition of "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Number of subordinate regulations have made under this legislation to improve air quality.

Ozone Depleting Substances (Regulation And Control) Rules, 2000.^[29] The Central Government in exercise of the powers conferred by sections 6, 8 and 25 of the Environment (Protection) Act, 1986, made the following rules for regulation/control of Ozone Depleting Substances (ODS). As per the notification certain control and regulation has been imposed on manufacturing, import, export, and use of these compounds. Organisations as per provisions of the notification shall phase out all equipment, which uses these substances, and is aiming at CFC free organisation in near future.

The Noise Pollution (Regulation and Control) Rules, 2000^[30] notified by Central Government to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standards in respect of noise.

The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996^[31] notified by the Central Government in exercise of the power conferred by Section 6, 8 and 25 of the Environment (Protection) Act, 1986, to control major emission, fire or explosion involving one or more hazardous chemicals and resulting from uncontrolled developments in the course of industrial activity or transportation or due to natural events leading to serious effects both immediate or delayed, inside or outside the installation likely to cause substantial loss of life and property including adverse effects on the environment.

The Central Motor Vehicles Rules, 1999,^[32] notified by the Central Government under section 110 of the Motor Vehicles Act, 1988^[33] to regulate air pollution from motor vehicles. The rules stated that gaseous pollutants emitted by motor vehicles should not exceed the standards as prescribed in these rules.

III. JUDICIAL ENDEAVOURS TO PREVENT AIR POLLUTION:

The Supreme Court of India is considered, in recent years, as the most important dispenser of environmental justice. In *Subash Kumar vs. state of Bihar*^[34], the apex court observed: right to life is a fundamental right under Art 21 of the constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has right to have resource to art 32 of the constitution for removing the pollution of water or air, which may be, detrimental to the quality of life.^[34]

In *Virulent Gar vs. State of Haryana*^[36] the Supreme Court observed, after referring to the Stockholm Declaration of 1972 and Principle 1 laid down in that Conference and after referring to Art. 48-A, Art. 47 and Art 51A(g), and Art. 21, "The word environment is of broad spectrum, which brings within its ambit, hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain a hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sover-

eign power and to forge in its policy to maintain ecological balance and hygienic environment. Art. 21 protects right to life as a fundamental right. Enjoyment of life and its attainment, including their right to life with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Art. 21. Therefore, hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live with human dignity without a human and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard the proper environment, but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment."

In *M. C. Mehta V. Shriram Food and Fertilizer Industries*,^[37] the petitioners, in this writ petition under Art. 32, sought a direction for closure of the various units of Shriram Foods & Fertilizers Industries on the ground that they were hazardous to the community. During the pendency of the petition, there was an escape of oleum gas from one of the units of Shriram. The Delhi Legal Aid and Advice Board and the Delhi Bar Association filed applications for award of compensation to the persons who had suffered harm on account of escape of oleum gas.

The Delhi Legal Aid and Advice Board is directed to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate Court for claiming compensation and the Delhi Administration is directed to provide necessary funds to the Board for the purpose.

An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute non-delegable duty to the community to ensure that if any harm results to anyone, the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm irrespective of the fact that the enterprise had taken all reasonable care and that the harm occurred without any negligence on its part.

The court imposed absolute liability on industries dealing with hazardous material. Scope of Article 21 broadened, by recognizing the right to claim compensation to victims of pollution hazards.

In *M. C. Mehta vs. Kamal Nath*^[38], the Supreme Court held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

In *Occupational Health and Safety Association v. Union of India and others*,^[39] where, the petitioner, a non-profit occupational health and safety organization, registered under the *Societies Registration Act, 1860*,^[40] has invoked the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking the writ of mandamus or any other appropriate writ, order, or direction directing the Respondents to frame guidelines with respect to occupational safety and health regulations to be maintained by various industries; and constitute a committee for the monitoring of the working of thermal power plants in India and to keep check on the health and safety norms for the workers working in their power stations. The Petitioner herein filed I.A. No. 1 of 2005 and 2 of 2007 and highlighted the serious diseases. The workers working in thermal plants are suffering from over a period of years.

The Court held that Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly the clauses (e) and (f) of Articles 39, 41 and 42. Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and a duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in such hazardous and risky jobs, then the responsibility and duty on the State is double-fold. Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards, etc. Dust emanates also contain free silica associated with silicosis, arsenic leading to skin and lung cancer, coal dust leading to black lung and the potentially harmful substances. Necessity for constant supervision and to the drive to mitigate the harmful effects on the workers is of extreme importance.

The Government of India later placed, before the court, a Report of the Committee prepared by the National Institute of Occupational Health (NIOH) titled 5 Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of

the year 2011.

The NIOH in its Report in 2011 has already made its recommendations with respect to the suggestions made by the Court in its order dated 30.1.2008.

A comprehensive document on environment, health and safety specific to coal based thermal power projects should be framed. It should cover the legal provisions, management system, best practices, safe operating procedures, etc. for various areas of thermal power plants. This will serve as a reference document for effective implementation of the provisions.

In *M.C. Mehta vs. Union of India*,^[41] where, M.C. Mehta, the environmentalist lawyer filed a petition in the Supreme Court, in 1985, alleging that the action taken by the authorities was not adequate and the challenging task of pollution control could not be successfully dealt with that proper way. In the course of the hearing, the Government accepts that pollution in Delhi is mainly on account of the high rise in the number of vehicles driven by petrol and diesel operating Delhi and New Delhi areas. The Government agrees to set up a committee to look into problems of vehicular pollution in Delhi and for devising a method of solution of the problem and the petition shall be deemed to be pending for the purpose of monitoring.

On 14 November 1990, the Union ministry of Environment acknowledged on affidavit that air pollution in Delhi was chiefly caused by vehicular pollution. The court directed the city administration to place before it a complete list of prosecutions launched against defaulting vehicles and noted that heavy vehicles were the main contributing factor to pollution and ought to receive more than attention from the authorities.

After taking detailed information about steps taken by the Delhi administration to control vehicular pollution in Delhi, on 14 March 1991 the court directed the Union Government to set up a high power committee with the following terms of reference.^[42]

- (1) To make an assessment of the technologies available for vehicular pollution Control in the world.
- (2) To make an assessment of the current status of technology available in India for controlling vehicular pollution.
- (3) To look at the low cost alternatives for operating vehicles at reduced pollution Level in the metropolitan cities of India
- (4) To examine the feasibility of measures to reduce/eliminate pollution from motor Vehicles both on short term and long term basis and make appropriate recommendation in this regard.
- (5) To make specific recommendations on the administrative/legal resolution required for implementing the recommendation in (3) above.

The committee shall furnish a report to the court once in two months as to the steps taken in the matter. The Central Government and Delhi Administration are directed to co-operate with the committee for its successful operation.

The committee's recommendations included

- The introduction of unleaded petrol
- Fitting all cars on the road with catalytic convertors
- Vehicles conversion to compressed Natural gas (CNG) or a dual-fuel mode system.
- Sticker standards of emission.

Subsequently, the Supreme Court through various orders directed the Union Government to provide lead-free petrol to the entire country by December 1996.

In another significant development the Supreme Court issued certain directions, accepting the report of the Mr. Bhure Lal committee, as it was felt by the court that any further delay in the performance of its duty by the administration could not be permitted. The court further issued direction that all commercial vehicles which are more than 20 years old shall not be permitted to ply in the National Capital Territory of Delhi with effect from 2nd October 1998.^[43]

The Supreme Court endorsed the Central Government's decision to set up EPPCA, environment pollution (prevention and control) Authority, The authority headed by Mr. Bhure Lal was constituted on 29 January 1998.

Finally, on 5th April 2002, the Court delivered its judgment. The court pointed out that it is the duty of the state under the provisions of the constitution to protect the health of people. So many directions had been issued in an effort to persuade the government authorities to take such steps as would reduce the air pollution.

It is as a result of intervention by the court that the following measures were taken

in controlling pollution to some extent.

1. Lowering of Sulphur content in diesel.
2. Ensuring supply of only lead free petrol.
3. Requiring the fitting of catalytic convertors.
4. Directing the phasing out of grossly polluting old vehicles.

It was during the course of these proceedings the Bhure Lal committee was established.^[44] Report of the committee was accepted and orders were passed by the court.

The Supreme Court directed that under Articles 39(e), 47 and 48-A it is the duty of the State to secure the health of the people, improve public health and protect and improve the environment. Under *Motor Vehicles Rules 1989*^[45], certain provisions have been made for regulating emission resulting in pollution. Transport Authorities of the Delhi Administration had placed facts and figures relating to steps taken under the Act for regulating pollution. Emission checking, prosecution as also steps for canceling of registration are said to be the normal steps taken by the Administration in this behalf. The Court, however, not satisfied that the action taken in this behalf was adequate and the challenging task of pollution control could not be successfully dealt with that way.

In *Namit Kumar vs Lt. Chadigarh*,^[46] the Punjab and Haryana High Court has also dealt with, inter alia, the problem of environmental pollution resulting from vehicular traffic. The High Court issued various directions to the concerned authorities to comply with the statutory provisions so that the air pollution due to vehicular traffic could be reduced and the residents could breathe clean and fresh air.

In *Re: Noise Pollution case*,^[47] where, CWP No. 72/98 is filed by Shri Anil K. Mittal, an engineer by profession moving the Court pro bono publico. The immediate provocation for filing the petition was that a 13 year old girl was a victim of rape (as reported in newspapers of January 3, 1998). Her cries for help sunk and went unheard due to blaring noise of music over loudspeakers in the neighborhood. The victim girl, later in the evening, set herself ablaze and died of 100% burn injuries. In due course the Supreme Court appointed amicus curiae and widened the scope of the petition to include noise from various sources, including firecrackers, traffic, loudspeakers and festival and cultural noise. Taking cognizance of the matters as public interest litigation, the Court vide its order dated 6.4.98, directed the cause title of the petition filed by Shri Anil Kumar Mittal to be amended as "In re. Noise Pollution Implementation Laws for Restricting Voice of Loudspeakers and High Volume Producing Sound System".

The present cases provide an opportunity for examining several questions, such as what is noise? What are its adverse effects? Whether noise pollution runs in conflict with the fundamental rights of the people? And what relief can be allowed by way of directions issued in public interest?

The *Environment (Protection) Act 1986*,^[48] rules for noise-pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is whether the appellant can be permitted to violate the said provisions and add to the noise pollution. In the view of Court, to claim such a right itself would be unjustifiable.

The Supreme Court directed that

1. The States shall make provision for the seizure and confiscation of loudspeakers, amplifiers and such other equipments as are found to be creating noise beyond the permissible limits.
2. *Noise Pollution (Regulation and Control) Rules, 2000*^[49] makes provision for specifying ambient air quality standards in respect of noise for different areas/zones, categorization of the areas for the purpose of implementation of noise standards, authorizing the authorities for enforcement and the achievement of laid down standards.¹³² The Central Government/State Governments shall take steps for laying down such standards and notifying the authorities where it has not already been done.

In *Church Of God (Full Gospel) In India. V. K.K.R. Majestic Colony Welfare Association And Others*,^[50] the respondent KKR Majestic colony made a complaint to the Tamil Nadu High Court (including pollution Control Board and various other authorities) that prayers on the Church located at KKR Nagar, Madhavaram High Road, Chennai, were recited by using loud speaker, drums and other sound producing instruments which caused noise pollution, thereby disturbing and causing nuisance (public) to the normal life of the residents of the said colony and made a request for a direction to take appropriate measures to control large-scale pollution.

Being convinced by the serious consequences of noise pollution, the High Court issued directions to the government for controlling the noise pollution and for the use of amplifiers and loudspeakers in the city. The appellant Church of God (Full Gospel) moved the Supreme Court challenging the order of the Tamil Nadu High

Court, alleging that the High Court has overlooked that the right to profess and practice Christianity is protected under Art. 25 of the Constitution of India. The questions involved in this appeal are that in a country having multiple religious and numerous communities or sects, whether a particular community or a sect of that community can claim right to add to noise pollution on the ground of religion. Whether, beating of drums or reciting of prayers by use of microphones and loudspeakers so as to disturb the peace or tranquility of the neighbourhood should be permitted.

Rejecting the appellant's contention, the Supreme court said: "Undisputedly no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be thorough voice amplifiers or beating of drums. In the Court's view, in a civilized society, in the name of religion, activities which disturb the older or infirm persons. Students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighbourhood and a student preparing for his exams are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. Their rights are also required to be honoured.

The court further said under the *Environment [Protection] Act 1986*,^[51] rules for noise pollution level are framed which prescribe permissible limits of noise in residential. Commercial, industrial areas of silence zone. The question is whether the appellant can be permitted to violate the said provisions and add to the noise pollution.

The rights under the Constitution of India are^[52] subject to Public order, morality and health. As stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities."

In *Pollution Control Board vs. Mahabir Coke Industry*,^[53] where, the appellant No. 1 is a firm registered under the Indian Partnership Act. The firm established a coke manufacturing factory with three units. At the time of establishment of the factory the appellant firm requested the Pollution Control Board, Assam (for short, the Board) for consent under the provisions of the *Water (Prevention and Control of Pollution) Act, 1974*^[54] which was in force at that time. The said request was made in respect of the entire factory. Consent was given by the Board. The Board used to give consent, from time to time as and when necessary. This state of affairs continued till the present Act, i.e. the *Air (Prevention and Control of Pollution) Act, 1981*^[55] came into force. As per Section 19 of the Act the State Government may, after consultation with the State Board, by notification in the Official Gazette, declare in such manner as may be prescribed, any area or areas within the State as an air pollution control area or areas for the purposes of this Act.

The learned single Judge disposed of the matter holding, inter alia, that the chimney of the industrial unit of the appellant-firm was emitting obnoxious pollutant substance causing air pollution. However, the learned single Judge did not consider the relevant provisions of the Act regarding the prescribed standard. And hold that the consent application is still pending for disposal and, therefore, it is the duty of the Board to take into consideration the facts and circumstances of the case and also to take all the measures which the Board is required to take as per the law.

The Supreme Court observed that the Pollution Control Board and their appointees or experts were accountable for the wrong advice. Three experts who gave a clean chit to certain industrial units, in respect of levels of emissions while advising the Pollution Control Board, were given show cause notices by the Supreme Court as their report was not in conformity with the evidence which showed the existence of severe air pollution.

In *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd.*,^[56] [Dahanu Thermal Power Plant Case] where, the State Government of Maharashtra approved a proposal of the Bombay Suburban Electricity Supply Company (BSESC), to set up a coal-based thermal power plant in the Dahanu Taluka of Thane District. On 29 March 1989, two local environmental activists: Nergis Irani and Kityam Rustom along with Bombay Environmental Action Group filed writ petitions first in the Bombay High Court and then in the Supreme Court challenging the decision of the Central Government to build the power plant. They lost the case, with the Court citing the necessity of energy to power the city of Mumbai as strong grounds to sanction the project. To allay petitioners' apprehensions of environmental damage, the Court directed that the condition requiring the installation of a Flue Gas Desulphurisation (FGD) plant should not be relaxed without a full consideration of the consequences. It is also important to mention that Dahanu was 'notified', or classified, under the Indian Coastal Regulation Zone (CRZ) by the MoEF on 19 February, 1991. The CRZ bans any new construction and development activities within 500 metres of the high tide line. Dahanu was also declared 'eco-fragile' by a government notification of 21 June 1991 (Notification under the *Environment Protection Act, 1986*,^[57] restricts the development of industries, mining operations and other development in the region). Even though Dahanu had been declared an ecologically fragile area, political and industrial interests continued

to bring forward development projects in Dahanu Taluka, sidelining both the eco-fragile notification and the CRZ notification of the Government of India. This led environmentalist Bittu Sehgal to file a writ petition in the Supreme Court in 1994, asking the Court to implement the notifications in Dahanu Taluka.

The Supreme Court then appointed the National Environmental Engineering Research Institute (NEERI) to investigate the issues set forth in the petition.

Based on the NEERI report, the Supreme Court upheld the Dahanu Notification prohibiting any change of land-use in the region and ordered that a committee of experts be formed under Section 3 of the *Environmental Protection Act of 1986*^[58] to ensure implementation of the environmental laws protecting Dahanu's eco-fragility.

The MoEF appointed the Dahanu Taluka Environmental Protection Authority in 1996 under the chairmanship of retired Mumbai High Court judge Justice C. S. Dharmadhikari and supported by a team of eleven expert members. The Authority is empowered to ensure the implementation of the Court directions as well as the eco-fragile notification of 1991.

In *Murli S. Deora v. Union of India*,^[59] the Supreme Court banned smoking in public places by ruling that non-smokers cannot be compelled to be helpless victims of air pollution.

IV. CONCLUSION

The Environment and life are interrelated. Natural resources are the base of survival and livelihoods. Human-caused the dangerous levels of pollution in water, air, earth and living beings; destruction and depletion of irreplaceable life forms and natural resources; major and undesirable disturbances in the earth's climate and protective layers; gross deficiencies, harmful to physical, mental and social health, in the living and working environments of humans, especially in cities and industrial complexes. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control. After the analysis of decided cases it is found that, the Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. In this way, the judiciary tries to fill in the gaps where there is the laciness of the legislation. "A judge is not a mimic. The greatness of the Bench lies in its creativity. When a law comes before a judge, he has to invest it with meaning and content and in the process of interpretation, he makes the law. It is, therefore, to my mind, essential that a judge must be in tune with social needs and requirements...."^[60] These new developments and innovation in India by the judicial activism open the many ways to meet the social and political needs of the country. Through Public Interest Litigation courts addressing environmental injustices by defending people's right to pollution free air.

REFERENCES:

1. Dr. Justice Shivaraj V. Patil, Acting Chairperson, NHRC of India, in Ashish Kothari and Anuprita Patel, (Ed.) *Environment and Human Rights An Introductory Essay and Essential Readings*, National Human Rights Commission, 2006.
2. Andrea Trentini, "Verifying Traffic Bans Effects on Air Pollution" Vol.3 Issue 1, *Journal of Atmospheric Pollution*,
3. R.C. Sharma, *Environmental Education*, New Delhi: Kalyani Publishers, 2006, p. 10.
4. Cynthia Pollock Shea, "Protecting the Ozone Layer", In *World watch Institute* (ed.), *State of the World* (1989), W.W Norton & Company, New York, p. 78.
5. Sivasakthivel. T and K.K. Siva Kumar Reddy, "Ozone Layer Depletion and Its Effects: A Review" *International Journal of Environmental Science and Development*, Vol.2, No.1, February 2011
6. V.D. Kulshreshtha, "Noise Pollution Emerging Challenges and Regulation" in Agarwal, S.L. (Ed.) *Legal Control of Environmental Pollution*, Tripathi (1998), p. 188.
7. Down to Earth Sep 30, 2011.
8. Chandra Pal, *Environmental Pollution and Development: Environmental Law, Policy and Role of Judiciary*, New Delhi: Mittal Publications, 1999, p. 177.
9. Dr. Mridula Das, "The Concept of Environmental Awareness in Noise Pollution among Different Undergraduate College Student in Burdwan District" *Indian Journal of Experimentation and Innovation in Education*, Vol. 3, Issue, 3, May 2014.
10. James L. Hildebrand, "Noise Pollution: An Introduction to the Problem and an Outline for Future Legal Research", *70 Columbia Law Review* (1970) 652 at p.658.
11. M. Nahaniel Mead, "Noise Pollution: The Sound Behind Heart Effects" *J. of Environ Health Perspect*, 115(11), Nov. 2007.
12. Lisa Goines, RN and Louis Hagler, MD, "Noise Pollution: A Modern Plague" *Southern Medical Journal*, Volume 100: March 2007.
13. Stephen A Stanceffed, Mark P Metheson, "Noise pollution: non-auditory effects on health" *British Medicine Bulletin* Vol. 68, Issue 1 (2003)
14. Osisanya, Ayodele; Oyewumi, Adebomi & Sunmonu, Maryam. "Occupational Exposure to Noise and Patterns of Hearing Threshold among Factory Workers in Ibadan Nigeria," *Journal of Medical Sciences and Public Health*, Vol. 2, No. 1, 2014.
15. http://en.wikipedia.org/wiki/air_pollution_in_India dt.30-4-2013.
16. Dr. Vijay S. Chitnis, Dr. Ramesh K. Tilak, "Changing face of the planet and Environmental Law, 1st. ed., 2001, snow White pub. Pvt. Ltd. Mumbai, p.163.
17. Rina Singh, Anuradha Shukla, S. Gangopadhyaya, "A pilot study of benzene in different

corridors of Delhi", Indian Journal of Air Pollution Control, Vol.X, No.1, March 2010.

18. Hindustan Times, New Delhi, Jun 05, 2015
19. The Economic Times February 13, 2013.
20. India TV News Desk , 29 Aug 2015, / www.dnaindia.com.visited on 14-11-2015
21. "National Ambient Air Quality Status & Trends In India-2010", Central Pollution Control Board Ministry Of Environment & Forests, January 2012, Pub. P R Division, Central Pollution Control Board on behalf of Shri J. S. Kamyotra, Member Secretary, CPCB.
22. [http://timesofindia.indiatimes.com./The Times of India, Apr 7, 2015,](http://timesofindia.indiatimes.com./The Times of India, Apr 7, 2015)
23. Art 39(b), Art 47, Art 48 and Art 49 of Constitution of India.
24. Article 48A of the Constitution of India.
25. Article 51-A of the Constitution of India.
26. Kailash Thakur, "Environmental Protection Law and Policy in India" Deep & Deep Publications, New Delhi, 1997, p.204
27. Act no. 14 of 1981.
28. Act no. 29 of 1986.
29. S.O.69(E), dated, the 25th January,2000, in the Gazette of India,
30. S.O. 123 (E), dated 14th February, 2000.
31. G.S.R. 347 (E), dated 1st August, 1996.
32. Vide G.S.R. 590 (E), dated 2-6-1989, published in the Gazette of India,
33. Act no. 59 of 1988.
34. Rule 115 of the Central Motor Vehicles Rules, 1999.
35. (1991) 1 SCC 598.
36. 1995(2) SCC 577.
37. 1987 SCR (I) 819.
38. (1997) 1 SCC 388.
39. Writ Petition (Civil) No.79 Of 2005.
40. Act no. 21 of 1860
41. Writ Petition(Civil) No.13029 of 1985.
42. M.C Mehta v. Union of India,(1992) 2 SCC 353.
43. M.C Mehta v. Union of India,(1998) 8 SCC 648.
44. Under sec.3 of the EPA, 1986.
45. Vide G.S.R. 590 (E), dated 2-6-1989'
46. CWP No. 7639/95 Decided on 9/07/98.
47. 2005, AIR 2005 SC 3136.
48. Act no. 29 of 1986.
49. Supra note 30.
50. AIR 2000 SC 2773.
51. Supra note 47.
52. Articles 25 and 26 of the Constitution of India.
53. AIR 1998 Gau 10.
54. Act No. 6 of 1974.
55. Act no. 14 of 1981.
56. 1991 (2) SCC 539.
57. Act no. 29 of 1986.
58. Ibid.
59. Writ Petition (civil) 316 of 1999.
60. Justice P N Bhagwati, 'JUDICIARY:HOLDING THE SCALES', p.49, The Hindu 15 August (1977).